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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,324	11/17/2003	Peter John Hunt	1171/41475/56B/106/107	5106
279 7590 05/22/2008 Trexler, Bushnell, Giangiorgi, Blackstone & Marr, Ltd. 105 West Adams Street Suite 3600 Chicago, IL 60603			EXAMINER PAIK, SANG YEOP	
			ART UNIT 3742	PAPER NUMBER
			MAIL DATE 05/22/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/715,324	HUNT ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Sang Y. Paik	3742	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29, 31 and 32 is/are pending in the application.
- 4a) Of the above claim(s) 1-14, 17-29 and 32 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15 is/are allowed.
- 6) ☒ Claim(s) 16 and 31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____                                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____   | 6) <input type="checkbox"/> Other: ____                           |

### DETAILED ACTION

1. The Board of Patent Appeals and Interferences affirmed the rejection(s) against claim(s) 1-14, 17-29 and 32, but reversed all rejections against independent claim(s) 16 and 31. Claims 1-14, 17-29 and 32 will be cancelled by the examiner in accordance with MPEP § 1214.06.

Only independent claim 15 had been indicated allowable before the appeal.

2. Since claims 16 and 31 are independent form and are not allowable, they require new action on the merits.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Daniell et al (US 5,558,084) in view of Ito (US 4,774,526).

Daniell shows the breathing assistance apparatus having a humidifier having with an electrical input power to activate a heater capable of humidifying the gas at the desired level, a conduit, a conduit heater, a controller which supplies power to the humidifier and the conduit heater, a control output such as the audio alarm indicator, indicative of the operating conditions of the apparatus, i.e., when fault conditions are

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detected, an alarm would sound. But, Daniell does not an indicator that is energized when the conduit heater is correctly connected to the controller.

Ito shows a fault detection circuit that is electrically connected to a controller or processor such as the CPU and a heater such as the print head that when proper electrical connection is made, the fault detection circuit having a photodiode would emit light.

In view of Ito, it would have been obvious to one of ordinary skill in the art to adapt Daniell with the fault detector with a photodiode to emit light when proper connection is made but to alarm when fault condition is detected.

5. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Daniell et al (US 5,558,084) in view of Heffer (US 4,905,684).

Daniell shows the method claimed including an audio alarm connected with a processor that would operate the alarm when sense undesirable circumstances and faults, but Daniell does not show the step of indicating when a conduit is properly connected.

Heffer shows that it is known to provide a light to indicate a proper connection such as a conduit to a connecting panel.

In view of Heffer, it would have been obvious to one of ordinary skill in the art to adapt Daniell with a light indicator to allow the user to indicate a correct connection of the conduit to the humidifier to ensure proper operations of the breathing apparatus.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sang Y. Paik whose telephone number is 571-272-4783. The examiner can normally be reached on M-F (6:30-3:30) First Friday Off.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/TU B HOANG/  
Supervisory Patent Examiner, Art Unit 3742

/Sang Y Paik/  
Primary Examiner, Art Unit 3742

syp



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